

REMARKS

Applicants have carefully reviewed the Non-Final Office Action mailed March 3, 2011, and thank Examiner Eloshway for the review of the pending claims. In response to the Office Action, Applicants have amended claim 1-2, 24, 36, and 37. In this amendment, Applicants have cancelled claims 23, 25-28, 33 and 38-39. Claims 3-22 were previously cancelled. By way of this amendment, no new matter has been added. Accordingly, claims 1-2, 24, 29-32, 34-37, and 40-42 remain pending in this application. At least for the reasons set forth below, Applicants respectfully traverse the foregoing rejections.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03. Applicants respectfully request reconsideration of the present application in view of the above amendment, and the following remarks.

Claim Rejections – 35 U.S.C. § 102

I. The Law

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). “The mere fact that a certain thing may result

from a given set of circumstances is not sufficient" to establish anticipation. *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981).

II. Claims 1, 2, 23-29, 31-33, 36-38, and 40-42 in view of Pyun

Claims 1, 2, 23-29, 31-33, 36-38 and 40-42 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. 2004/0089626 to Pyun (hereinafter "Pyun"). Applicant respectfully traverses the rejection.

A. Independent Claim 1

Claim 1, as amended, recites a vent system for a drinking container, whereby the vent system comprises "a single member closure member" that is configured for coupling to an open top of the drinking container. Further, the claimed closure member also includes "at least one air vent tube with more than one air vent tube openings in a periphery of said closure member, wherein said more than one air vent tube openings are operationally connected to said air passage," and "a one-way valve sealingly and removably coupled to said closure member and operatively connected to said air passage, said air vent tube and said more than one air vent tube opening, . . ." The claimed one-way valve permits passage of air from outside the container into the interior of the container "through said more than one air vent tube opening, said air vent tube, and said valve, . . ." while preventing flow of liquid from the interior of the container to outside the container through the vent system. Support for the amendments to claim 1 may be found in originally presented claims 2-3, as well as page 11, lines 8-9, page 17, lines 4-5 and FIGs. 1-11, as originally filed.

There are a number of limitations present in claim 1 that are not taught, suggested or disclosed by Pyun. Accordingly, claim 1 is patentable over Pyun. For example, claim 1 requires "a single member closure member". In contrast to this limitation, Pyun teaches a vent system comprising *a two-piece closure member* and two valves. More specifically, Pyun teaches an air venting apparatus for a milk bottle and describes a nursing bottle having a teat 2 and an air venting apparatus 1000. The air venting apparatus 1000 comprises an upper plate 2000, a lower plate 3000, and an annular connection member 4000. The upper plate 3000 includes at least one air inlet

groove 2100 formed therein for introducing air into the bottle through a fixing frame 3a. *See, e.g.*, Paragraphs [0045-46]; FIGS. 1, 2 and 9. Accordingly, and in contrast to claim 1, Pyun teaches a vent system comprising a *two-piece* closure member, rather than the claimed “single member closure member” required by claim 1. For at least this reason claim 1 is patentable over Pyun.

Claim 1 also requires at least one air vent tube “with more than one air vent tube opening in a periphery of said closure member.” This limitation is also not shown in Pyun. For example, as described above, Pyun teaches that the upper plate 3000 is configured with multiple air inlet grooves 2100 formed in the bottom surface of upper plate 3000 that open into an air vent path 3a. Thus, Pyun fails to teach an air vent tube. Nor does Pyun teach an air vent tube “with more than one air vent tube opening in a periphery of [the] closure member.” At most, Pyun only teaches grooves that each have a *single* opening in a periphery of the upper plate 3000. Accordingly, for this additional reason, claim 1 is patentable over Pyun.

Pyun also does not teach, suggest or disclose “a one-way valve” as defined in claim 1. More specifically, claim 1, as amended, requires a one-way valve that permits “passage of air from outside the container into said interior of the container through said more than one air vent tube opening, said air vent tube, and said valve, and preventing flow of liquid from the interior of the container to outside the container through said vent system.” Pyun does not teach the valve defined by claim 1. Instead, Pyun teaches that the lower plate 3000 includes an air control valve 3400 that has a first non-return valve 3400c formed on a side of the control valve body to control air flow into the bottle; and a second non-return valve 3400d formed on the bottom of the air control valve. This second non-return valve 3400d opens inwardly in the control valve body so as to release the pressure of the gas (A1) generated from the high-temperature milk under the control valve body. *See Paragraph [0046].* The first non-return valve 3400c of Pyun permits air to enter the bottle, while the second non-return valve 3400d is expressly configured to permit steam and hot gasses to escape from the bottle. In other words, the second non-return valve 3400d of Pyun is expressly configured to open in the direction of the air vent apparatus to permit the release of the hot gases from inside the container. Because the second non-return valve 3400d is configured in this manner, the second non-return valve 3400d cannot prevent the “flow of liquid from the interior of the

container to outside the container through said vent system" as expressly required by claim 1. Indeed, Pyun actually teaches away from the arrangement of claim 1 in that the second non-return valve is expressly configured so that liquid would flow *out* of the container through the air inlet groove, thereby causing leakage. As such, claim 1 is not anticipated by Pyun. Withdrawal of the rejection is therefore respectfully requested.

B. Dependent Claims 2, 23-29, 31-33, and 36

As an initial matter, dependent claims 23, 25-28 and 33 have been canceled. Accordingly, the rejection of these claims is moot.

With respect to claims 2, 24, 29, 31-32 and 36, all of these claims depend from claim 1 and are therefore patentable merely by virtue of their dependency upon claim 1. However, these claims also contain additional subject matter that is separately patentable. For example, claim 2 recites that the valve includes a circular opening adapted and configured to receive a connecting element of the closure member. This limitation is not taught, suggested or disclosed in Pyun. Accordingly, Applicant respectfully requests withdrawal of the rejection.

C. Independent Claim 37

While of a different scope than claim 1, independent claim 37 is patentable over Pyun for similar reasons as discussed above in connection with claim 1. Independent claim 37 is directed to a method for forming a drinking container. The recited method requires mounting, on a drinking container, a *single piece closure member*. However, as discussed above, Pyun teaches a two-piece closure member. More specifically, Pyun teaches an air venting apparatus 1000 for a milk bottle that comprises upper plate 2000 and a lower plate 3000. *See, e.g.*, Paragraphs [0045-46]; FIGS. 1 and 2. Accordingly, and in contrast to claim 37, Pyun teaches a vent system comprising a *two-piece* closure member, rather than the claimed "single member closure member" required by claim 37. Accordingly, for at least this reason claim 37 is patentable over Pyun.

Claim 37 also requires “sealingly and removably coupling a one-way valve to said closure member, said valve being operatively connected to said air passage, said air vent tube, said more than one air vent tube openings, and extending into said container, for permitting passage of air from outside the container into said interior of the container through said more than one air vent tube opening, said air vent tube, and said valve, and preventing flow of liquid from the interior of the container to outside of the container through the closure member; so as to form a substantially vacuum-free, non-leak drinking container.” These limitations are also not shown in Pyun.

More specifically, Pyun teaches that the lower plate 3000 includes an air control valve 3400 that has a first non-return valve 3400c and a second non-return valve 3400d. The first non-return valve 3400c is formed on a side of the control valve body to control air flow into the bottle. The second non-return valve 3400d is formed on the bottom of the air control valve and is configured to open inwardly in the control valve body so as to release the pressure of the gas (A1) generated from the high-temperature milk under the control valve body. *See Paragraph [0046].* Thus, the first non-return valve 3400c of Pyun permits air to enter the bottle, while the second non-return valve 3400d is expressly configured to permit steam and hot gasses to *escape* from the bottle. In other words, the second non-return valve 3400d of Pyun is expressly configured to open in the direction of the air vent apparatus to permit the release of the hot gases from inside the container. Because the second non-return valve 3400d is configured in this manner, the second non-return valve 3400d cannot prevent the “flow of liquid from the interior of the container to outside the container through the closure member so as to form a substantially vacuum-free, non-leak drinking container.” Indeed, Pyun actually teaches away from the arrangement of claim 37 in that the second non-return valve is expressly configured so that liquid would flow *out* of the container through the air inlet groove, thereby causing leakage. As such, claim 37 cannot be anticipated by Pyun for this separate reason.

Claim 37 also requires that the closure member that is mounted on the drinking container further includes “at least one air vent tube with more than one air vent tube opening in a periphery of said closure member, wherein the air vent tube is operationally connected to said air passage.” These limitations are also not shown in Pyun. Instead, Pyun teaches that the upper plate 3000 is configured with multiple air inlet grooves 2100 that open into an air vent path 3a. Thus, Pyun fails

to teach an air vent tube. Nor does Pyun teach an air vent tube “with more than one air vent tube opening in a periphery of [the] closure member.” At most, Pyun only teaches a groove that has a *single* opening in a periphery of the upper plate 3000. Accordingly, for this additional reason, claim 37 is patentable over Pyun. Withdrawal of the rejection is therefore respectfully requested.

D. Dependent Claims 40-42

Dependent claims 40-42 all depend from claim 37. While these claims all contain additional subject matter that is separately patentable over Pyun, these claims are also patentable merely by virtue of their dependency upon claim 37. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claim Rejections – 35 U.S.C. § 103

I. The Law

“To establish *prima facie* obviousness of a claimed invention, all the claim recitations must be taught or suggested by the prior art.” *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

II. Claims 30 and 39

Claims 30 and 39 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pyun in view of U.S. 7,204,380 to Webb et al. (hereinafter “Webb”). Applicants respectfully traverse the rejection.

As an initial matter, claim 39 was canceled. Accordingly, the rejection is now moot with respect to claim 39.

Claim 30 depends from claim 29, which depends from claim 1. Thus, the arguments presented above with respect to claim 1 are equally applicable here. More specifically, the failure

of Pyun to teach, suggest or disclose all of the limitations of claim 1 is fatal the rejection under §103. Nor does the Webb make up for the deficiencies of Pyun.

Further, claim 30 requires that that the *anti-bubble tube* comprise “a heat sensor of a thermally reactive material to indicate a temperature of a liquid in the container.” This limitation is not taught or shown in Webb. As an initial matter, Web does not even disclose an anti-bubble tube. Thus, Webb cannot disclose an anti-bubble tube that comprises a heat sensor of a thermally reactive material. At most, Webb only discloses “a cup body made of an appropriate heat sensor material which changes colour at a specified temperature.” As both Webb and Pyun fail to teach, suggest or disclose *an anti-bubble tube* that comprises *a heat sensor* as set forth in claim 30, Applicant respectfully requests that the rejection be withdrawn.

III. Claims 34 and 35

Claims 34 and 35 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Pyun in view of U.S. 5,779,071 to Brown et al. (hereinafter “Brown”). Applicants respectfully traverse the rejections.

Claims 34 and 35 both depend from claim 1. Thus, the arguments presented above with respect to claim 1 are equally applicable here. More specifically, the failure of Pyun to teach, suggest or disclose all of the limitations of claim 1 is also fatal the rejection under §103. Nor does the Brown make up for the deficiencies of Pyun.

Brown teaches a vent unit having a vent insert which abuts between a reservoir tube and a nipple. A vent unit airway extends between the outside of the bottle and a point in the reservoir tube above the level of the liquid trapped inside the vent tube when the bottle is inverted. However, contrary to claim 1 (and thus, also claims 34 and 35 from these claims depend), Brown does not teach a one-way valve. Indeed, Brown does not teach a valve at all. Accordingly, the bottle in Brown provides no mechanism for preventing liquid from flowing back out through the vent airway. Indeed, since the end of the airway inside the reservoir tube is open, liquid can enter the airway when the bottle is filled above the point of said open end when the bottle is in the upright position,

and escape through the airway when the bottle is inverted for feeding. Further, liquid can also enter the open end of the airway when the bottle is being shaken or when the bottle is transported. Thus, like Pyun, Brown also teaches away from the claims in that claim 1 specifically requires that the claimed one-way valve is configured to prevent the flow of liquid from the interior of the container to outside the container through said vent system. Accordingly, for at least this reason, Applicant respectfully requests that the rejection of claims 34 and 35 be withdrawn.

CONCLUSION

In view of the above amendment and remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

Any fees due with this response are identified in an accompanying transmittal. However, if any additional fees are due, please charge our Deposit Account No. 18-0013, under Order No. 66599-0012 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

Dated: July 5, 2011 (the 3rd falling on a Sunday)

Respectfully submitted,

Electronic signature: /Kristin L. Murphy/
Kristin L. Murphy
Registration No.: 41,212
RADER, FISHMAN & GRAUER PLLC
Correspondence Customer Number: 10291
Attorney for Applicant